IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 4.12.2006

Dr. Keshav Goswami Vs. Hoshiyar Singh & another.

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Atul Lakhanpal,
for the appellant.

Virender Singh, J.

Respondents Hoshiyar Singh and Nanak Chand were initially booked in a complaint case filed by the complainant (petitioner herein) under Sections 380, 454, 506/34 IPC. After recording the preliminary evidence, they were summoned to face trial under Sections 454/506 read with Section 34 IPC. After appreciating the pre-charge evidence, learned trial Court charge-sheeted them for the offence punishable under Section 454 IPC only. The petitioner again appeared for further cross-examination and produced Kulwinder Singh (PW2) and Shri Sahadevpuri (PW3).

After appreciating the entire evidence, both the respondents have been acquitted vide impugned judgment of Chief Judicial Magistrate, Fatehabad dated 28.3.2006. Aggrieved by the same, the

appellant has filed the instant appeal along with an application bearing Crl. Misc. No.443-MA of 2006 under Section 378 (4) for grant of special leave to appeal.

We have heard Mr. Atul Lakhanpal, Advocate, for the petitioner and with his assistance gone through the impugned judgment minutely.

Mr. Lakhanpal contends that the statement of the appellant (complainant) has been corroborated by the aforesaid two witnesses, namely, Kulwinder Singh and Sehdevpuri. He then submits that the learned trial Court has erred in observing that the complainant has not been able to prove his ownership of the buffalo, iron girders and the rickshaw etc. All these items are used by the farmers in routine and it is impossible for them to keep documentary evidence qua the ownership.

Primarily on the basis of the aforesaid submissions, Mr. Lakhanpal prays for setting aside the impugned judgment of acquittal.

After having re-scanned the entire evidence, we are of the view that the finding of the learned trial Court in discarding the case of the appellant (complainant) is not perverse on any count warranting our interference for taking a different view. The learned trial Court has entered into a detailed discussion in para 13 of the impugned judgment and returned a categoric finding that the petitioner has failed to prove the guilt beyond reasonable doubt.

It is well settled that the order of acquittal is to be disturbed

only if the same is palpably wrong, manifestly erroneous or demonstrably unsustainable resulting into miscarriage of justice. The case in hand is not of that type. We thus see no good ground to interfere with the decision appealed against and decline grant of special leave to appeal.

Consequently Crl. Misc. No.443-MA of 2006 is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

December 4, 2006
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